

## Hoover Tops Kennedy in Documenting Case

Behind the wire tapping and "bugging" dispute between J. Edgar Hoover and Robert F. Kennedy lies the long-smouldering issue on the function of the Federal Bureau of Investigation. What is basically at stake here now and in the post-Hoover FBI arouses strong feelings.

FBI Director Hoover's documentation in the dispute is thus far quite obviously much stronger than Robert F. Kennedy's. This leaves the former attorney general in the uncomfortable position, when the best color is put on it, of insufficiently informing himself on possibly the most sensitive and controversial of the FBI's investigating techniques.

Wiretapping and "bugging" have been flash-point issues for decades. As chief counsel for the McClellan Committee, Kennedy had every reason to know. Wiretaps taken by local authorities in New York were played during the televised hearings of the McCel-

lan Committee for all the world to hear.

It is not highly credible that Senator Kennedy, in view of his background as a Senate investigator, would have taken such an active disinterest in how and why the FBI tapped people's wires and listened through the walls as he now professes. But even if this is true and the senator did not know what was going on when he was attorney general, it reflects little credit on his administrative methods.

Hoover's testimony, supported by documentation bearing Kennedy's name, is quite to the contrary and to the effect that Kennedy did know and approved of the FBI's controlled and limited program of electronic surveillance.

What underlies this dispute is that Kennedy had permitted himself to become a carrier or sounding-board for the entirely unjustified accusation that the FBI had gotten out of control and is tapping telephones and bugging private citizens by the thousands.

What could be better proof of this than that such a puritanical attorney general as Kennedy was in the dark, as he claimed, in some of the more sensational cases?

For months Hoover smoldered under this implication. FBI officials were not hiding their resentment but they also were not holding a press conference to denounce Kennedy. They kept their peace until Iowa's Rep. H. R. Gross, following up on the circumstances leading to the Department of Justice's confession of error in the case of Fred Black Jr., decided as a shot in the dark to address a letter to Hoover asking for the facts on FBI bugging and wiretapping.

Gross was astonished by the rapidity of Hoover's reply. It was hand-delivered to Gross by an FBI agent two days later while Gross was vacationing in Mississippi.

In the excitement over two such well-known celebrities as Hoover and Kennedy challenging each other's veracity, the real meaning of the incident

was lost. This lies in the fact that the FBI is so circumscribed and so limited in its use of electronic listening that its effectiveness in combating organized crime and espionage is impaired.

Far from tapping thousands of telephones or bugging hundreds of hotel rooms, the FBI maintained in 1961 only 78 wiretaps and 67 electronic listening devices, mostly in the field of internal security and a few to get information on organized crime. The figures may be somewhat higher than that today but the number is still small, averaging out to more than two or three a state, but concentrated, of course, in areas where organized crime and espionage flourish.

This exposes for the nonsense it is the Washington mythology that everybody who amounts to anything is wired in to FBI headquarters. A suspected wiretap in Washington is regarded as a status symbol attesting to the importance of an official or private citizen who thinks he hears a foreboding click in his receiver.

The James Bond complex seems to affect particularly those of the liberal bent and they nurture and promote the silly notion that their secret lives are being probed by the FBI, undoubtedly for political reasons, or for some youthful indiscretion.

Many will be disappointed to discover that they are not in fact being bugged by the FBI, but they will undoubtedly cling to the illusion because it is part of their political credo which they thought Kennedy's attitude was sustaining.

These illusions run so deep that the function and effectiveness of the FBI will be in jeopardy when its strongest symbol, J. Edgar Hoover is forced to retire. Hoover has headed off the FBI reformers on one point by getting the record clear on the extent of wiretapping and bugging, and the careful restrictions on the use of these devices, which are subject to the control of the attorney general whether or not he exercises that control.

DAVID LAWRENCE

## An Independent FBI Proposed

The controversy between the Federal Bureau of Investigation and a former attorney general as to when wiretapping and eavesdropping are justified or illegal could have a salutary result. For sooner or later the American people will have to face up to the fact that the Department of Justice is a political body, subject to the whims of a President or an attorney general, and this raises the question of whether law enforcement shouldn't be completely separated in the future from the executive branch of the government.

To put in the hands of a cabinet officer the power to decide how laws shall be enforced means that political pressures can interfere with prosecutions or can lead to the use of the investigative mechanism as a weapon of political reprisal.

The attorney general of the United States today is not responsible directly to the people. Yet in most cities and counties the prosecuting attorney must go before the electorate periodically so that judgment can regularly be passed on his particular performance in office.

The Department of Justice, as a law-enforcement agency, logically has a close relationship to the judicial branch of government, and is being constantly supervised by orders or opinions rendered by the courts. It is apparent from the current dispute over

"bugging" that there is no clear definition of where public rights begin or end and when privacy must be respected.

Congress has the power under the Constitution to write laws that not only prescribe the jurisdiction of the federal courts but also authorize steps to be taken from time to time to enforce the laws of the land.

Law enforcement, moreover, is a task so closely related to interpretations of law that it would be more natural to have the head of the FBI serve a 15-year term and report directly to Congress—as is the case with the comptroller general—than to make him responsive, as to present, to the edicts of the man in the White House or his attorney general.

Within the past 80 years, Congress has established what are known as "independent agencies"—the first being the Interstate Commerce Commission in 1887. Many similar bodies have been created since. Their rulings are subject to court review (and they have become quasi-judicial commissions of the government. Their members are appointed by the President and confirmed by the Senate. They are not supposed to be under the duress or pressure of the President, and have the right to act independently of the executive branch of the government. An analogous setup for the Federal Bureau of

Investigation would at least permit its detachment from politics and would assure impartiality in handling the rules of law enforcement and investigative procedures.

It is true that through all the years during which the Federal Bureau of Investigation has operated there have been relatively few instances of political interference by any administration. But the President or his representative in the Department of Justice does have the power to tell the FBI what to do. This has just been emphasized by the disclosure of various memoranda passing between the FBI and Robert F. Kennedy when he was holding the office of attorney general and his brother was President of the United States.

It has taken a good deal of courage for J. Edgar Hoover, who has been director of the FBI since 1924, to stand up to all the attorneys general who have from time to time sought to give him instructions as to what his agency could or could not do in law enforcement. Fortunately, most of these differences have been resolved without publicity and in a constructive way. But the weakness in the system still prevails, and will not be cured until the FBI is set up as an independent agency similar to the various federal commissions already established by Congress.